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Supreme Court of the United States

October Term, 1960

No. 514

MICHAEL STONE,

Petitioner,

against

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

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To the Chief Justice of the United States and the Associate Justices of the United States Supreme Court:

Petitioner respectfully asks this Court to issue a writ of certiorari to review the judgment of the United States Court of Appeals for the Second Circuit, affirming his conviction on two counts of an indictment charging violations of Sec. 152; Title 18, U. S. C., but finding that the Trial Court committed prejudicial error which would necessitate a reversal of the conviction on Count 1 of the indictment, if that count stood alone.

(a) The Opinions Below

The opinions of the Courts below have not been officially reported. Said opinions have been duly certified by the United States Court of Appeals for the Second Circuit, and are being submitted herewith.

(b) Statement of Grounds of Jurisdiction

1. The judgment of the Court of Appeals was rendered and entered on the 18th day of July, 1960.

2. Timely application for rehearing was made on August 1, 1960, and was denied on October 3, 1960.

3. Jurisdiction of this Court is invoked pursuant to 18 U. S. C., Rule 37, and 28 U. S. C., § 1254.

(c) Questions Presented for Review

1. Whether the Court of Appeals erred in finding that the prejudicial error committed by the Trial Court in refusing to make the grand jury minutes available to the defendant did not carry over to Count 2 of the indictment.

2. Whether the Court of Appeals erred in finding that there was sufficient evidence to support the conviction of the defendant on Count 2 of the indictment.

~~"Guilty". This, too, with a jury of some women and men, some of the women living and having to go home to the Bronx at that time of night.~~

(d) Statutes and Rules Involved

Title 18, United States Code, Section 152. *Concealment of assets; false oaths and claims; bribery:*

> "Whoever knowingly and fraudulently conceals from the receiver, custodian, trustee, marshal, or other officer of the court charged with the control or custody of property, or from creditors in any bankruptcy proceeding, any property belonging to the estate of a bankrupt; or
>
> Whoever knowingly and fraudulently makes a false oath or account in or in relation to any bankruptcy proceeding; or

Whoever knowingly and fraudulently presents under oath any false claim for proof against the estate of a bankrupt, or uses any such claim in any bankruptcy proceeding, personally, or by agent, proxy, or attorney, or as agent, proxy, or attorney; or

Whoever knowingly and fraudulently receives any material amount of property from a bankrupt after the filing of a bankruptcy proceeding, with intent to defeat the bankruptcy law; or

Whoever, knowingly and fraudulently gives, offers, receives or attempts to obtain any money or property, remuneration, compensation, reward, advantage, or promise thereof, for acting or forbearing to act in any bankruptcy proceeding; or

Whoever, while an agent or officer of any person or corporation, and in contemplation of a bankruptcy proceeding by or against such person or corporation, or with intent to defeat the bankruptcy law, knowingly and fraudulently transfers or conceals any of the property of such person or corporation; or

Whoever, after the filing of a bankruptcy proceeding or in contemplation thereof, knowingly and fraudulently conceals, destroys, mutilates, falsifies, or makes a false entry in any document affecting or relating to the property or affairs of a bankrupt; or

Whoever, after the filing of a bankruptcy proceeding, knowingly and fraudulently withholds from the receiver, custodian, trustee, marshal, or other officer of the court entitled to its possession, any document affecting or relating to the property or affairs of a bankrupt.

Shall be fined not more than $5,000 or imprisoned not more than five years, or both."

(e) Statement of Case

"STATEMENT OF FACTS

The first count of the indictment charges the defendant in substance with having unlawfully, wilfully, knowingly and fraudulently concealed 1823 dresses belonging to the bankrupt estate of Ellen Joan Fashions, Inc. from the Trustee in Bankruptcy of said corporation from on or about November 17, 1955 up to the date of the filing of the indictment. The second count of the indictment charges the defendant in substance with having knowingly and fraudulently made a false oath in a material matter on or about June 24, 1955 in the 'Statement of Affairs' filed by Ellen Joan Fashions, Inc., a corporation of which he was secretary, in failing to disclose that repayments of loans had been made by said debtor to defendant's wife, Anita Stone, during the year immediately preceding the filing of the petition for arrangement by Ellen Joan Fashions, Inc. (R. 542-546).

The case was tried before the Honorable Richard H. Levet, District Judge and a Jury (R. 1-541). The testimony adduced at the trial will be hereinafter discussed. The trial resulted in a verdict of guilty against the defendant on both counts of the indictment. An appeal was taken from the judgment and sentence (R. 600-602). The defendant was admitted to bail pending the outcome of his appeal, and said bail was continued by the Court of Appeals pending the outcome of the instant writ.

The pertinent evidence adduced by the Government at the trial may be summarized briefly as follows:

A petition for arrangement under Chapter XI of the bankruptcy Act was filed by the defendant on behalf of Ellen Joan Fashions, Inc. on June 24, 1955. Ellen Joan Fashions, Inc. continued to operate its business thereafter until November 17, 1955, at which time it was adjudicated a bankrupt and the New York Credit Men's Adjustment Bureau, Inc. was appointed Trustee (R. 21).

The first witness called on behalf of the Government, Louis M. Mintz, a certified public accountant, testified that he had served as the accountant for Ellen Joan Fashions, Inc. from approximately July, 1954 until the early part of 1955 (R. 24, App. 44a). This witness identified various of the books and records of Ellen Joan Fashions, Inc. and these books and records were then introduced in evidence (R. 25-36). Thereafter the Government introduced in evidence an inventory of Ellen Joan Fashions, Inc. as of January 31, 1955 through Rose Navon, a bookkeeper employed by Ellen Joan Fashions, Inc. (R. 69).

The next Government witness, David Freedman, a certified public accountant employed by the accounting firm of Simonoff, Peyser & Citron, testified that he performed an audit of the books of Ellen Joan Fashions, Inc. on behalf of the Creditors Committee of that corporation commencing in July, 1955 (R. 62, 63, App. 13a, 14a). Mr. Freedman testified that he had taken the inventory dated January 31, 1955 (Govt.'s Exh. 21) as a starting point and added to that dresses received from contractors of Ellen Joan Fashions, Inc. between February 1, 1955 and June 22, 1955 (R. 80, 81, App. 20a). From the resulting figure, he subtracted the number of dresses sold during this period (R. 85, App. 24a) after subtracting therefrom the dresses returned by customers during the same period (R. 86, App. 25a). The witness testified that after subtracting the number of dresses sold from the total computed as having been on hand, there were 1950 dresses to be accounted for (R. 87, App. 26a). From this figure, Mr. Freedman deducted the number of dresses on hand on June 24, 1955, leaving an alleged shortage of 1866 garments (R. 121, 122, App. 41a). Another witness, Milton Brahms, a certified public accountant employed by the firm of Simonoff, Peyser & Citron, was called during Mr. Freedman's testimony to testify as to the number of dresses which he computed to have been on hand at the place of business of Ellen Joan Fashions, Inc. on June 24, 1955 (R. 103, App. 30a) and it was his figure of 84 dresses which was incorporated into Mr. Freedman's computations.

Mr. Freedman also testified that he had examined the general ledger of Ellen Joan Fashions, Inc. and had found three payments made to Anita Stone by the corporation: $3,000.00 on July 19, 1954; $2,000.00 on March 25, 1955 and $220.00 on May 12, 1955, all of which payments were reflected in the cash disbursements book of Ellen Joan Fashions, Inc. (R. 113, 114, App. 34a). Mr. Freedman also testified as to an entry in the books of Ellen Joan Fashions, Inc. which was made on August 25, 1954 transferring $10,000.00 from the amount due to Anita Stone to paid in surplus (R. 113, App. 34a, 35a).

Mr. Freedman further testified that when he began his audit he was given the bank statements and cancelled checks of the corporation by the corporation's bookkeeper (R. 115, App. 37a) and three checks covering these payments were thereupon introduced in evidence as Government's Exhibits 25, 26 and 27 (R. 116, 117, App. 37a, 38a). This testimony given by David Freedman constituted the sum and substance of the Government's case against the defendant.

The Government's next witness, George Feldman, testified that he was Assistant Secretary of the New York Credit Men's Adjustment Bureau, Inc. and that said Bureau became Trustee on or about November 17, 1955 (R. 153). On cross-examination Mr. Feldman testified that during the period of arrangement between June 24, 1955 and November 17, 1955, there were four or five creditors' meetings held at the office of the New York Credit Men's Adjustment Bureau, Inc. lasting over a period of months and that the alleged shortage of merchandise was discussed with customers at these meetings (R. 160) and that these meetings began on or about June 30, 1955 (R. 162).

The Government's next witness, David Whitted, testified that he had been employed by Ellen Joan Fashions, Inc. from 1952 to the summer of 1955 as a packer and shipper (R. 171, 172, App. 53a). Mr. Whitted testified that during the period between

February 1, 1955 through June 24, 1955, he had delivered two shipments of dresses totaling a maximum of 125 dresses for which charge slips had not been prepared at the time of the delivery, and that these were the only occasions during this period on which he could remember deliveries having been made without charges (R. 180, 181, App. 57a, 58a).

Mr. Whitted was the only packer and shipper employed by Ellen Joan Fashions, Inc. (R. 172, App. 53a) and there was no other evidence of any shipments having been made by the firm during this period without charges.

On cross-examination it was shown that Mr. Whitted had delivered these dresses to known customers of Ellen Joan Fashions, Inc., that the deliveries had been made during business hours and that he had obtained receipts from the customers to whom the dresses were delivered (R. 184, 186, 187, 188, 193; App. 59a, 61a, 62a, 63a 65a). The witness also testified that he had no knowledge as to whether bills had been thereafter prepared for these customers or whether they had returned the merchandise (R. 185, App. 60a).

At no time during the trial did the Government introduce any testimony whatsoever to show that the books and records of Ellen Joan Fashions, Inc., which were in evidence, failed to reflect the transactions with respect to which Mr. Whitted had testified.

The testimony of the final Government witness, Eugene Whitwam, a special agent of the Federal Bureau of Investigation specializing in accounting work, was merely repetitive of the testimony given by David Freedman, the accountant employed by the Creditors Committee of Ellen Joan Fashions, Inc. Mr. Whitwam's analysis of the alleged shortage of dresses parallelled the analysis made by Mr. Freedman, except for the fact that Mr. Whitwam arrived at a shortage of 1823 dresses (R. 197, 198, App. 67a, 68a) instead of 1866.

Upon cross-examination, Mr. Whitwam testified that during his conversations with the defendant

prior to the trial, the defendant indicated that the alleged shortage of dresses could possibly be explained by the fact that there had been a number of thefts in the building occupied by Ellen Joan Fashions, Inc. (R. 204, 213, App. 68a, 69a, 71a).

Mr. Whitman also conceded on cross-examination that he had never found any proof whatsoever that any merchandise had been delivered or taken from Ellen Joan Fashions, Inc. without corresponding entries having been made in the books of that firm and that he had never heard that any proof of such nature had been obtained by anyone (R. 215, 216, App. 71a).

At the conclusion of Mr. Whitwam's testimony, the Government rested its case (R. 220) and a motion was made by the defendant to dismiss both counts of the indictment (R. 220 through 239), which motion was denied (R. 238, 239).

Anita Stone, the first witness called on behalf of the defendant, testified that during the period covered by the indictment she had been employed as a buyer for a dress concern in which she had no financial interest (R. 240, 241, App. 71a-73a). She further testified that although she was the president of Ellen Joan Fashions, Inc., she had nothing to do with the running of its business, except that from time to time she borrowed money from certain outside sources, on behalf of Ellen Joan Fashions, Inc. (R. 243, 244, App. 75a), that she had no money of her own to lend to the business (R. 247, App. 75a), and that all of the monies which she received from the firm went to repay the persons from whom the money had been borrowed (R. 245-246, App. 76a).

The defendant, Michael Stone, then took the witness stand on his own behalf. He denied that he had concealed any dresses or money from the creditors of Ellen Joan Fashions, Inc. or from the Trustee in Bankruptcy (R. 280, 281, App. 79a, 80a), or that he had knowingly and fraudently made false oath in the Statement of Affairs filed in the Matter of Ellen Joan Fashions, Inc., Debtor (R. 281-283; App. 80a, 81a).

The defendant further testified that the facts regarding the schedules were obtained from the books of Ellen Joan Fashions, Inc. and that they had been made up by its bookkeeper without any assistance from the defendant. He also stated that he believed that the information he received from the bookkeeper truly represented the condition of Ellen John Fashions, Inc. (R. 283; App. 81a, 82a). He then testified that his principal function on behalf of Ellen Joan Fashions, Inc. was the styling and selling of dresses which required him to travel out of town frequently (R. 289, 290, App. 85a, 86a).

On cross-examination, the defendant denied that 1800 dresses were missing in June of 1955, and further denied having admitted to the Grand Jury that the dresses were missing. Thereupon, in an attempt to impeach this testimony, the prosecuting attorney read the following question and answer from the testimony given by the defendant before the Grand Jury:

> 'Q. Now, at the time the petition was filed in June of 1955 a shortage of approximately 1860 dresses was found. A. Yes.
>
> Q. Do you recall that? A. Yes.' (R. 332, App. 87a.)

The defendant consistently denied that there was any actual shortage of dresses and this testimony given before the Grand Jury merely indicated that he had been advised by Mr. Freedman, the accountant for the Creditors' Committee, that a theoretical shortage of dresses had been 'found'. The prosecution referred to the Grand Jury minutes again at a later stage in the cross-examination of the defendant in an attempt to impeach his testimony (R. 342).

Defendant's counsel thereafter moved for permission to examine the Grand Jury minutes for the purpose of examining the testimony of the defendant to see what other testimony was given on the matters to which the prosecuting attorney had alluded (R. 362, 363, App. 89a), but the Court denied defendant's application (R. 364, App. 90a).

> On redirect examination, the defendant testified that the schedules which had been filed on behalf of Ellen Joan Fashions, Inc. on June 24, 1955 had been prepared by a stenographer in the office of his attorney from information which had been given to her by the bookkeeper employed by Ellen Joan Fashions, Inc. (R. 376, 377, App. 99a, 100a)."
>
> At the conclusion of the entire case, defendant's counsel moved to dismiss both Counts of the indictment which motion was denied (R. 389-392, App. 101a-104a).
>
> After the case had been submitted to the jury, the jury returned a verdict of guilty after almost seven hours of deliberation (R. 483). Thereafter, defendant's counsel made a motion to set aside the verdict (R. 490-512), which motion was denied in the opinion rendered by the Court (R. 551-570, App. 141a-163a)."

Petitioner was sentenced to 18 months on each of Counts 1 and 2 to run concurrently. On appeal, the Court of Appeals affirmed the judgment of the District Court and a petition for rehearing was denied.

(f) Jurisdiction of the Courts Below

The District Court had jurisdiction under Title 18, U. S. C., Sec. 152.

The Court of Appeals had jurisdiction under Title 28, U. S. C., Section 1291.

(g) Reasons Relied On

As to Question 1:

Once the Court of Appeals found that the Trial Court had clearly committed prejudicial error in refusing defendant's request to examine his own testimony given before the grand jury, it appears clearly arbitrary for that Court to have determined that this error did not affect defendant's substantial rights with respect to Count 2 of the indictment.

In discussing the failure of the District Court to permit the defendant to inspect the Grand Jury minutes, the Court of Appeals stated that "We cannot be certain that this objective demonstration of the consistency of Stone's trial testimony with what he said before the grand jury would not have been far more effective than what the trial jury may have regarded as an invented and self-serving explanation." But in an other part of its opinion affecting the second count of the indictment the Court of Appeals stated that "* * * we cannot believe the oe error to which proper objection was taken, namely, the failure to make the grand jury minutes available, prejudicial as we hold this to have been with respect to Count 1, carried over to the wholly different transactions charged in Count 2 with respect to which the government had made no claim of inconsistent grand jury testimony." These statements by said Court must be read together and, if that is done, two things become apparent—(1) that the conclusion in the latter statement is merely one of belief, which denotes conjecture and surmise, rather than one of fair assurance or conviction; (2) that if the trial jury "may well have regarded Stone's trial testimony as an invented and self-serving explanation", as indicated in the former statement of the Court of Appeals, then it is just as reasonable to believe that this attitude affected its consideration not only of Count 1 of the indictment, but also of Count 2 of the indictment.

Petitioner respectfully submits that it cannot arbitrarily be said that once a jury has been given the impression that the defendant has been caught in a lie and has been confronted with apparently inconsistent testimony given before the Grand Jury, the trial jury will confine its conclusions with respect to defendant's credibility to the count of the indictment under which this seemingly inconsistent testmony has been introduced. As a matter of fact, any unfair attack upon defendant's

credibility and character must necessarily affect the jury's consideration of his entire testimony.

In its decision the Court of Appeals stated that the jury was warranted in rejecting defendant's explanation that the amounts recorded as loans by Mrs. Stone were, in fact, loans from various other persons for whom she acted as a conduit, and that the repayments also went to them. If the jury felt that petitioner had been successfully impeached with respect to his explanation of the apparent shortage of dresses, how can it be stated that they did not reject his explanation of the loans to Anita Stone upon the basis that his testimony had been found untrustworthy? In this connection, this Court's attention is called to the fact that the Trial Judge, in his charge, instructed the jury as follows:

> "*If any witness has wilfully testified falsely to any material fact, you may disregard all his testimony* or you may accept such part of it as you believe worthy of belief—as appeals to your reason or judgment. Remember always, it is the quality of the evidence that counts.
>
> *A witness may be discredited or impeached* by contradictory evidence; or *by evidence that at other times the witness has made statements which are inconsistent with the witness' present testimony.*
>
> If you believe any witness has been impeached and thus discredited, it is your exclusive province to give the testimony of that witness such credibility, if any, as you may think it deserves." (R. 476, 477) (Italics ours.)

In view of this charge can it be stated with fair assurance that the jury may not have disregarded petitioner's entire testimony upon the basis that he had been impeached by evidence that at other times he had made statements which were seemingly inconsistent with his present testimony?

Furthermore, since fraudulent intent is an essential ingredient of the crime charged against petitioner, his general character and credibility must have been a factor affecting the jury's determination as to his guilt or innocence in that respect as well. It is to be noted that the jury deliberated for seven hours and requested a reading of petitioner's testimony before he was found guilty on both counts. Thus, even at the moment of final deliberation the jury was made once more aware of petitioner's seemingly inconsistent testimony before the Grand Jury.

In determining whether error committed by a trial court constitutes harmless error or prejudicial error, the courts often take into consideration the question as to whether the case is a doubtful or closely contested one, or one in which the guilt of the accused has been clearly established. In the instant case the Court of Appeals stated with respect to Count 1 of the indictment that "on the whole we think there was enough evidence to send County 1 to the jury * * * although barely so." With respect to Count 2 of the indictment, they stated that petitioner had made an argument "which is quite persuasive as regards the March 25 and May 22 payments", thereby leaving only the failure to disclose the $3,000 payment of July 19, 1954 to sustain the conviction. Then the Court of Appeals found that the trial court committed clearly prejudicial error in failing to make the Grand Jury minutes available to petitioner, which error would necessitate a reversal of the conviction on Count 1 of the indictment if that count stood alone. Petitioner submits, then, that in determining whether this prejudicial error affecting petitioner's substantial rights carried over to Count 2 of the indictment, the doubtful and closely contested nature of the case should also be taken into consideration.

This Honorable Court, in the case of *Kotteakos v. United States*, 66 S. Ct. 1239, at 1248; 328 U. S. 750, stated as follows:

> "But if one cannot say, with fair assurance, after pondering all that happened without stripping the erroneous action from the whole, that the judgment was not substantially swayed by the error, it is impossible to conclude that substantial rights were no affected. The inquiry cannot be merely whether there was enough to support the result, apart from the phase affected by the error. It is rather, even so, whether the error itself had substantial influence. If so, or if one is left in grave doubt, the conviction cannot stand."

Certainly, where the Court of Appeals has found that the prejudicial error may well have affected the trial jury's considerations, it cannot be said, with fair assurance, that this effect was limited to its consideration of Count 1 of the indictment only, and that the jury's judgment was not substantially swayed by the error in its consideration of petitioner's guilt or innocence with respect to County 2 of the indictment.

It is respectfully submitted, therefore, that since petitioner's conviction hangs upon such a slender thread, and since there are clearly demonstrable flaws even in this thread, it would be unfair to deny petitioner the right to a fair trial in which any unjust advantage obtained by the Government would be eliminated from the consideration of the jury.

As to Question 2:

Petitioner contends that the Government failed to prove that the answer to Item 10 of the Statement of Affairs was false, that the answer was material, that the answer affected a matter material to an issue which is itself material, and that it was an intentional untruth. It is respectfully submitted that the Government failed to establish any of these elements necessary to constitute perjury.

The Government's accountant, David Freedman, referred in his testimony to three alleged repayments by corporate check to Anita Stone on July 19, 1954, March 5, 1955, and May 12, 1955, in the sums of $3,000.00, $2,000.00 and $220.00, respectively. There was submitted by the Government through Mr. Freedman Government's Exhibit 22B which is marked "Loans Payable to Anita and Michael Stone—as at—June 24, 1955". This exhibit contains the following entries:

"February 1, 1954	Balance due to Anita Stone	$1,980.00
	Less — Balance due from Michael Stone	1,371.57
February 1, 1954	Net Balance due to Anita and Michael Stone	608.43"

There are then listed various loans to Ellen-Joan Fashions, Inc. by M. Stone and A. Stone. The first item is that of May 14, 1954 which represents a loan by Anita Stone in the sum of $10,000.00. In the same exhibit, under payments charged to the loan account, there appears under date of July 19, 1954 a payment to Anita Stone of $3,000.00. Reverting back to the side referring to loans to the corporation on Government's Exhibit 22B, we find the following statement: "Less Transferred to Paid in Surplus—August 25, 1954—$10,000.00". Mr. Freedman testified that this $10,000.00 was transferred from the amount due from Anita Stone to Paid in Surplus [R. 113, App. 34a, 35a], as reflected in the journal entry made in the books of the corporation, *leaving an amount due from Anita Stone to the corporation of $1,020.00.*

If this Exhibit which was created by the Government's accountant purportedly from the books and records of the Ellen-Joan Fashions, Inc. is examined in a realistic perspective as affecting the account of Anita Stone, then the conclusion is inescapable that the $3,000.00 which was paid

to Anita Stone on July 19, 1954 could not possibly have been termed a "repayment of loan" since the $10,000.00 loan which was made on May 14, 1954 was transferred intact to Paid in Surplus. This would have been impossible if the $3,000.00 had been applied in reduction of the original loan of $10,000.00. It is, therefore, apparent that the $3,000.00 must have been treated on the books as either a withdrawal or a loan to Anita Stone. In this connection, it is important to call this Honorable Court's attention to Question 14 appearing in the Statement of Affairs and the answer thereto, as follows [Govt. Exhibit 1]:

> "14. Withdrawals.
>
> a. What personal withdrawals, including loans, have been made by each member of the partnership, or by each officer, director or managing executive of the corporation, during the year immediately preceding the filing of the original petition herein?
>
> As appear in the books and records."

The reading of the answer to Question 14 shows that the corporation directed the attention of the creditors to the books and records of account in order to obtain full information as to the nature of the transactions between Anita Stone and the corporation, since a clear explanation or statement cannot be made in answer to Question 10 by reason of the confusion which appears in the books and records affecting these items.

As a matter of fact, Government's Exhibit 22B, as prepared by Mr. Freedman purportedly from the books and records, is not a true analysis thereof because it refers to to a transfer to Paid in Surplus on August 25, 1954 of $10,000.00 without showing that this $10,000.00 was transferred from the Anita Stone account, as Mr. Freedman testified.

Another glaring example of the confusion created by Government's Exhibit 24 prepared by Mr. Freedman is the

item under date of July 19, 1954, "Repayment to A(nita) S(tone), Cash Disb., Page 113, $3,000.00" appearing in a column headed "Repayments to Anita Stone", whereas the cash disbursements book which is in evidence as Government's Exhibit 3, merely shows a payment to Anita Stone and does not indicate whether this is a repayment of a loan or whether it is a withdrawal or a loan to Anita Stone.

The foregoing analysis shows that it is entirely inconsistent to treat the payment of $3,000.00 as a repayment of a loan and to transfer to the Anita Stone Paid-in-Surplus account the amount of $10,000.00.

Without the accountant's description in Government's Exhibit 22B and Government's Exhibit 24 characterizing the payment of $3,000.00 to Anita Stone as "repayment" of a loan, which is contrary to the journal and ledger entries, there would be no evidence whatsoever that the $3,000.00 constituted a repayment of a loan, and it is for such reason that there was no evidence before the Court upon which to base a conviction for perjury.

A fortiori the two payments made thereafter to Anita Stone of $2,000.00 on March 25, 1955 and $220.00 on May 12, 1955 must have been loans or withdrawals and could not possibly have been repayments of loan, since at the time of these transactions the corporation did not owe her these sums of money. Even in his testimony at the trial, Mr. Freedman did not refer to these two transactions as "repayments" but designated them merely as payments to Anita Stone [R. 114, App. 35a]. However, it should be pointed out that Government's Exhibit 24 prepared by Mr. Freedman is utterly misleading since the $2,000.00 transaction of March 25, 1955 and the $220.00 transaction of May 12, 1955 are listed in a column which is headed "Repayments to Anita Stone", although these words do not appear in the corporate books.

In connection with these two payments to Anita Stone of $2,000.00 and $220.00, there is an additional reason for

finding that the Government failed to prove that appellant's answer to Question 10 contained in the Statement of Affairs was false. Government's Exhibit 22B treated the Michael and Anita Stone account as a unit, as did the corporate ledger for the period commencing February 1, 1955 [A. & M. Stone Account No. 18, general ledger, Government's Exhibit 2]. An examination of this account reveals that the debit items beginning with the first transaction on February 28, 1955 through the last transaction on April 30, 1955 total the sum of $4,440.00. This sum of $4,440.00 consists of the following items:

February 28, 1955	1,000.00
February 28	300.00
March 31	2,200.00
April 30	140.00
April 30	800.00

The item of March 31st in the sum of $2,200.00 encompasses the $2,000.00 paid to Anita Stone on March 25, 1955 together with the sum of $200.00 paid to Michael Stone on March 10, 1955, as shown on Government's Exhibit 22B. Adding to the sum of $4,440.00 the payment of $220.00 made to Anita Stone on May 12, 1955 [Government's Exhibit 22B], which does not appear in this account, we arrive at the sum of $4,660.00. This is the exact figure given by petitioner in answer to Question 10 in the Statement of Affairs as having been paid to him between February 28, 1955 and June 24, 1955, the date of the filing of the petition.

It is, therefore, apparent that petitioner included all of the items appearing in the A. and M. Stone Account as debits in his answer to Question 10 as payments to him, without regard to whether they were debited to himself or to his wife, Anita Stone, and that the total of $4,660.00 specifically included the $2,000.00 and $220.00 payments to Anita Stone. It is immaterial that petitioner listed them as payments to himself in view of the fact that both the Government and the accountant for the corporation are

parently treated the Anita and Michael Stone transactions as a unit.

Under the circumstances, the Government cannot claim to have proved that appellant's answer to Question 10 was false in that he failed to list these payments to Anita Stone since he included these payments to Anita Stone in said answer, despite the fact that they did not actually constitute repayments of loans.

In any event, the Government utterly failed in its attempt to prove that appellant knowingly and fraudulently gave a false answer in the Statement of Affairs since the proof offered by the Government indicates that at the very least there was extreme confusion as to the nature of the transactions entered in the books of the corporation. Petitioner has shown that these transactions did not constitute "repayments of loan" but constituted withdrawals or loans to Anita Stone and as such properly belong in the answer to Question 14, which refers to "withdrawals, including loans * * * made by officers of the corporation". Therefore the answer given "as appears in the books and records" would direct the attention of all interested persons to the payment made to Anita Stone.

It is convincingly clear that appellant did not intentionally withhold information in his answer to Question 10, and, in fact, included more information than was required of him.

The Court below found that petitioner had made "a quite persuasive" argument as regards two of the three payments made to Anita Stone which were the subject matter of this count of the indictment, but found that petitioner had no explanation of the failure to report the $3,000 payment of July 19, 1954 to Anita Stone.

It is respectfully submitted that said Court completely overlooked petitioner's argument that this $3,000 payment did not constitute a "repayment of loan" which peti-

tioner was required to list in answer to item 10 of the Statement of Affairs in the Chapter XI proceeding. There is no mention whatsoever in this Court's decision of petitioner's analysis of the testimony of the Government's principal witness, David Freedman, and of the books and records of the corporation which were introduced in evidence at the trial, showing that this payment to Anita Stone could not possibly have constituted a "repayment of loan".

Since the Court below virtually conceded that the two payments made on March 25 and May 22, 1955 to Anita Stone were sufficiently revealed in the Statement of Affairs so that they could not constitute a basis for petitioner's conviction, and since said Court stated that the conviction on Count 1 would have to be reversed because of the refusal to grant peitioner's request for the Grand Jury minutes of his testimony, it is apparent that petitioner's conviction is based solely upon his failure to set forth this $3,000 payment in answer to item 10 of the Statement of Affairs.

The affirmance of the judgment of conviction thus disregarded petitioner's argument that this transaction did not constitute a repayment, and that even if it did constitute a repayment, petitioner could not be convicted of having *knowingly and fraudulently* failed to list this transaction as a repayment, since the books and records of the corporation were, at best, confusing with respect to this item. Despite the fact that the Court of Appeals treated the $3,000 transaction as a repayment of loan to Anita Stone, it stated that it is entirely possible that if the disclosure of the March 25th and May 22nd repayments had been argued to the jury, the jury would not have found defendant guilty for failure to report a single payment made to Mrs. Stone nearly eleven months before. The implication of this statement is that, even if petitioner's answer in the Statement of Affairs were

false, the jury would not have found him guilty of having *knowingly and fraudulently* made such false statement with respect to a single remote transaction. If this Honorable Court accepts defendant's argument that this transaction did not constitute a repayment of a loan or, at the very least, that the transaction was so complex as to prevent petitioner from recognizing it as a repayment, then it will recognize that the jury *could* not have found the defendant guilty for failure to report this single payment.

Conclusion

It is respectfully submitted that the various questions raised in this petition are of such importance in the administration of criminal law that there should be an authoritative determination of the same by this honorable court.

Accordingly, the petitioner asks that this court issue a writ to review the judgment of affirmance herein.

Respectfully submitted,

ARCHIBALD PALMER.
Attorney for Petitioner.

Dated: New York, N. Y.
October 29th, 1960.

APPENDIX

Opinion of United States Court of Appeals for the Second Circuit on Appeal from Judgment

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

No. 354—October Term, 1959.

(Argued June 10, 1960 Decided July 18, 1960.)

Docket No. 26088

UNITED STATES OF AMERICA,

Appellee,

v.

MICHAEL STONE,

Defendant-Appellant.

Before:

LUMBARD, *Chief Judge*,
and HAND and FRIENDLY, *Circuit Judges*.

Defendant appeals from a judgment of the District Court for the Southern District of New York, Richard H. Levet, *Judge*, convicting defendant, after a jury trial, on both counts of an indictment which charged him with concealing property from a trustee in bankruptcy and making a false oath in and in relation to a bankruptcy proceeding, in violation of 18 U. S. C. § 152. Affirmed.

IRVING YOUNGER, Ass't U. S. Att'y (S. Hazard Gillespie, Jr., U. S. Att'y for the Southern Dist. of New York, and Otis Pratt Pearsall, Ass't U. S. Att'y, on the brief), *for Appellee.*

PALMER, MASIA & PALMER, New York, New York, *for Defendant-Appellant.*

FRIENDLY, *Circuit Judge*:

Michael Stone was engaged in the business of manufacturing and selling ladies' dresses. He did this through a corporation, Ellen-Joan Fashions, Inc. His wife Anita was the corporation's president, a director and sole stockholder; Michael was a director and had the title of secretary. In fact Anita performed no significant services for the corporation, which Michael, ran. On June 24, 1955, Ellen-Joan Fashions, Inc. filed a petition for an arrangement under Chapter XI of the Bankruptcy Act; on November 17, 1955, it was adjudicated a bankrupt and New York Credit Men's Adjustment Bureau, Inc., hereafter the Bureau, was appointed trustee.

On August 7, 1958, a grand jury in the Southern District of New York returned an indictment charging Michael Stone with two offenses under 18 U. S. C. § 152. The first count charked that Stone had knowingly and fraudulently concealed from the trustee "property belonging to the bankrupt estate of Ellen-Joan Fashions, Inc., to wit, 1,823 dresses of the approximate value of $14,555.57." The second count charged that Stone had knowingly and fraudulently made a false oath in, and in relation to, a bankruptcy proceeding in that the statement of affairs filed in the Chapter XI proceeding of Ellen-Joan, which he had verified, "failed to disclose that repayments of loans had been made by the said debtor to Anita Stone * * * whereas, in truth and in fact, as the defendant then and there well

knew, such repayments of loans to Anita Stone had been made by the said debtor." After deliberating for seven hours during which it requested the exhibits and a reading of Stone's testimony, the jury found defendant guilty on both counts. Judge Levet, in an opinion, denied a motion to set aside the verdicts. He imposed sentences of 18 months' imprisonment on each count, the two sentences to be served concurrently.

Defendant contends there was not sufficient evidence to warrant a conviction on either count. He complains also of the court's failure to require the government to make his testimony before the grand jury available to him after the government had cross-examined him in regard to it. Some of the points now most heavily relied upon by appellant's counsel were first made only after the verdict or even on appeal; under Fed. R. Crim. Proc. 52(b), we have thought it our duty to consider these, *Screws* v. *United States*, 325 U. S. 91, 107 (1945) (opinion of Mr. Justice Douglas); *United States* v. *O'Connor*, 237 F. 2d 466, 472 (2d Cir. 1956). We would reverse the conviction on Count 1 if that were alone. However, since the sentences on the two counts run concurrently, the judgment must stand if the conviction on either count was proper, *Lawn* v. *United States*, 355 U. S. 339, 362 (1958), and we find no sufficient basis for disturbing the verdict on Count 2. Accordingly we affirm.

The government's case to substantiate the charge of concealment of assets from the trustee in Count 1 was this: Early in July, 1955, accountants retained by the Bureau made an audit of Ellen-Joan. The start-off point was an inventory, taken by appellant on January 31, 1955, showing 816 dresses then on hand. The accountants added 13,658 dresses received from contractors (net after returns) between February 1 and June 24, 1955, making a total of 14,474 dresses to be accounted for. Sales (less returns) and dresses on hand on June 24 amounted to only 12,608. This left 1,866 dresses unaccounted for. An officer of the Bureau testified that the shortage was discussed at several creditors' meetings relating to the proposed arrangement;

that Stone first said he did not understand the reported shortage; that Stone's counsel asked for more time to explain this; and that at the creditors' meetings, the last of which was in late October or early November, there was continuous discussion "to clear up this question of the shortage and if that was cleared up they would discuss an adjustment. Otherwise they would entertain only a plan for a hundred per cent." A special agent of the Federal Bureau of Investigation testified that in May, 1957, Stone had told him on two occasions that the only explanation Stone could offer for the missing dresses was that they had been stolen while he was away on business trips. The government offered evidence that the physical arrangement of Ellen-Joan's premises made such a theft unlikely. It showed that the statement of affairs filed in the Chapter XI proceeding on June 24, 1955, answered "No" to Item 13, "Have you suffered any losses from fire, theft or gambling during the year immediately preceding the filing of the petition herein?" And an employee of Ellen-Jones testified that during the first half of 1955, he had made two deliveries to customers, totaling between 70 and 126 dresses, on Stone's instructions, for which no charge slips were prepared.

This testimony sufficed to support a finding that the operator of this one-man business had taken property belonging to it. However, the offense of which Stone was charged consists not simply in taking property belonging to the estate but in concealing it from the trustee, who was not appointed until November 17, 1955. It would be unlikely in the last degree that if Stone had taken 1,800 dresses between February 1 and June 24, he would still have had them on November 17. Hence the government's case necessarily rests upon the premise, which indeed defendant does not seem to challenge, that the indictment may be construed as charging concealment of the dresses or their proceeds or, if not, that any variance may be disregarded. See *Gerson* v. *United States*, 25 F. 2d 49 (8th Cir. 1928); *United States* v. *Rosenblum*, 176 F. 2d 321, 324 (7th Cir.), *cert. denied*, 338 U. S. 893 (1939).

However, that is by all odds the easiest problem; the difficult ones are whether there was enough evidence to warrant the jury in finding that Stone still had the proceeds on November 17, and, if so, that he concealed them from the trustee. On the former point we have been told, as to a similar issue concerning turnover orders, that "Under some circumstances it may be permissible, in resolving the unknown from the known, to reach the conclusion of present control from proof of previous possession." *Maggio v. Zeitz*, 333 U. S. 56, 65 (1948). *Hersh v. United States*, 68 F. 2d 799 (9th Cir. 1934) and *Reiner v. United States*, 92 F. 2d 823 (9th Cir. 1937) held the inference impermissible upon the evidence there offered; but the government distinguishes those decisions on their facts, as the Ninth Circuit itself has done in *Noell v. United States*, 183 F. 2d 334 (1950), where, however, the case for drawing the inference was stronger than here. *United States v. Schiro-son*, 116 F. 2d 881, 884 (3d Cir. 1941), is more troublesome for the government in this respect as is *Rizzuto-Gross Co. v. United States*, 20 F. 2d 36 (6th Cir. 1927), whereas *Lacaud v. United States*, 33 F. 2d 582 (6th Cir. 1929), gives it some support. It is debatable whether Stone can properly be said to have practiced a "concealment" from the Bureau as trustee in view of the knowledge the Bureau had acquired on behalf of the creditors in the abortive Chapter XI proceeding, cf. *Hersh v. United States*, *supra*; we suppose he can be since he would be concealing the whereabouts of the property, assuming he had taken the dresses and still had them or their proceeds, even though the trustee was convinced of the taking. Authority is of little aid in cases such as this where slight differences of fact and in the feel of the evidence may be of crucial significance; on the whole we think there was enough evidence to send Count 1 to the jury, *United States v. Feinberg*, 140 F. 2d 592, 594 (2d Cir.), *cert. denied*, 322 U. S. 726 (1944); *United States v. Costello*, 221 F. 2d 668, 671 (2d Cir. 1955), although barely so. However, the defendant was entitled to an instruction clearly placing before the

jury the issue of his possession of some of the property or its proceeds on November 17. Doubtless the judge would have given such an instruction if he had been asked; instead he charged that "evidence of a merchandise shortage permits an inference of guilt", which we deem insufficient on the facts here.

Whether or not the conviction on Count 1 should be reversed on this ground although no proper request was made or exception taken, Fed. R. Crim. Proc. 52(b), it would have to be on the ground of the refusal of defendant's request for the grand jury minutes of his testimony. Stone took the stand in his own defense. Although admitting knowledge of some minor shortages in dresses, he denied that 1,800 were missing, saying this was simply what the accountants told him. The government sought to impeach this testimony by reading Stone the following question and answer from his grand jury testimony:

> "Q. Now, at the time the petition was filed in June of 1955 a shortage of approximately 1,800 dresses was found? A. Yes."

Stone said, "I remember the question and the answer is probably there, but the answer is probably from the accountant who gave it to me." On redirect examination Stone's counsel asked "permission to examine the grand jury minutes at this time for the purpose of only examining the testimony of this gentleman to see what other testimony was given on the same score."; this was refused. We held in *United States* v. *Cotter*, 60 F. 2d 689, 692, *cert. denied*, 287 U. S. 666 (1932) that when the prosecution uses testimony of a defendant before the grand jury, the defendant must be allowed to inspect it. The judge's failure to grant defendant's request is understandable since the request was predicated in part upon a citation of *United States* v. *Hiss*, where the charge was perjury before a grand jury. Despite the inapposite and misleading reference we think the point was sufficiently brought to the Court's attention.

and, both for this reason and because of the plain error rule, the question is whether the refusal was prejudicial. The government says it was not, since the defendant himself supplied the reconciliation between his alleged admission of the loss before the grand jury and his denial of it at the trial, and the minutes would have done no better. We disagree. Inspection of the minutes, a copy of which this Court caused to be submitted to appellant's counsel for comment in his reply brief, reveals *inter alia* the questions and answers reproduced in the margin.[1] We cannot be certain that this objective demonstration of the consistency of Stone's trial testimony with what he had said before the grand jury would not have been far more effective than what the trial jury may well have regarded as an invented and self-serving explanation. See *United States v. Zborowski*, 271 F. 2d 661, 667 (2d Cir. 1959). Indeed, the prosecution should not have opposed defendant's request for the minutes, as the Assistant United States Attorney who argued the appeal frankly conceded.

If the conviction is to stand, it must thus be on the basis of Count 2.

Item 10 of the statement of affairs in the Chapter XI proceeding bankruptcy Form 3, requiring an answer to the question "What repayments of loans have you made during the year immediately preceding the filing of the original petition herein?" To this the statement verified by Stone made the following response:

> "Chemical Corn Exchange Bank & Trust Co., repaid full amount of $10,000.; David Schwartz repaid full amount of $5,000. Sue Brett repaid full amount of $2,000.00; Michael Stone, Secretary, repaid $4,666.00 since February 28, 1955—balance due $3,038.00; all as appear in the books and records"

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[1] "Q. Did you take an inventory in March? A. From then on I did take inventories and there was always some dresses short, but not to that amount that was recorded there.

"Q. In other words you never discovered a shortage of 1800? A. Not to that amount.

"Q. Can you give us an idea? A. They reported their shortage. Our accountants never reported."

An accountant testified that the books of Ellen-Joan showed three payments to Anita Stone during the year, one of $3,000 on July 19, 1954, another of $2,000 on March 25, 1955 and a third of $220 on May 12, 1955; the government claimed these were repayments of loans[2]. The principal defense was that the amounts recorded as loans by Mrs. Stone were in fact loans from various other persons for whom she acted as a conduit and that the repayments also went to them. We need not consider whether a charge of failure to disclose such repayments would have been an unallowable variance; for the government chose instead to challenge the veracity of the explanation and, although we do not say defendant's story was necessarily incredible, the jury was warranted in rejecting it. Appellant's claim that any failure to include repayment of loans to Mrs. Stone in the answer to Item 10 would have been inconsequential in view of the reference made to the books and accounts, is plainly without merit; the very purpose of the statement of affairs is to give dependable information

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[2] The July 19, 1954 check is endorsed:

Anita Stone
OK for Cash
Anita Stone
Selma Barasch.

Mrs. Stone admitted the first three lines were in her handwriting. Selma Barasch was Ellen-Joan's bookkeeper.

The March 25, 1955 check is endorsed "Anita Stone" in what is concededly her handwriting; underneath her endorsement is a rubber-stamp:

XN FOR DEPOSIT IN XN

The Public National Bank and Trust Company of New York

JERELL JUNIORS, INC.

Jerell Juniors, Inc. was one of the persons from whom Anita claimed to have obtained loans.

The May 22, 1955 check bears the endorsement:

for dy to acct of

Anita Stone

Mrs. Stone denied this was in her handwriting; clearly the handwriting is different from that on the other two checks.

without need of going further.[3] Appellant now makes an argument, not put before the jury, which is quite persuasive as regards the March 25 and May 22 payments. This is that the loan account on the company's general ledger was a single account combining loans payable to Anita and Michael Stone and that analysis shows the two payments to Anita on March 25 and May 12 must have been included in the $4,600.00 recited in the statement of affairs as having been repaid to Michael "since February 28, 1955." However, this affords no explanation of the failure to report the $3,000 payment of July 19, 1954. It is, of course entirely possible that if defendant's counsel had argued the disclosure of the March 25 and May 22 repayments to the jury as he has to us, the jury would not have found defendant guilty for failure to report a single payment made to Mrs. Stone nearly eleven months before; but this we can never know. To reverse because of counsel's belated discovery of this point would go beyond the plain error rule of Fed R. Crim. Proc. 52(b), and we cannot believe the one error to which proper objection was taken, namely, the failure to make the grand jury minutes available, prejudicial as we hold this to have been with respect to Count 1, carried over to the wholly different transactions charged in Count 2 with respect to which the government had made no claim of inconsistent grand jury testimony. Judgment affirmed.

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[3] See 1 Collier, Bankruptcy, ¶ 7.14, at 994-95 (14th ed. 1956). The requirement, Bankruptcy Act § 7(a)(9), 11 U. S. C. § 25(a)(9), was added by the Chandler Act, 52 Stat. 847 (1938). It had been provided for in the Hastings-Michener bill (H. R. 9068, S. 3866) of 1932.

Opinion of United States Court of Appeals for the Second Circuit on Petition for Rehearing

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

No. 242—October Term, 1959.

(Petition for rehearing filed August 1, 1960

Decided October 3, 1960.)

Docket No. 26088

—o—

MICHAEL STONE,

Petitioner.

v.

UNITED STATES OF AMERICA,

Respondent.

—o—

Before:

LUMBARD, *Chief Judge*, and
HAND and FRIENDLY, *Circuit Judges*.

On Petition for a rehearing.

PER CURIAM:

Stone's petition for rehearing urges that "this Court completely overlooked appellant's argument that this $3,000 payment [of July 19, 1954] did not constitute a 'repayment of loan' which petitioner was required to list in answer to

item 10 of the Statement of Affairs in the Chapter XI proceeding" because the loan account showed an item "Loans—Transferred to Paid in Surplus—August 25, 1954—$10,000" which would have left a balance due to the corporation if the $3,000 item had in fact been the repayment of a loan from Mrs. Stone. Our failure to mention this argument was not because we had overlooked it but rather because it concerned an issue of fact properly for the jury.[1] *Non constat* the $10,000 transfer to surplus recorded on August 25, a balance of more than $3,000 had been owing by the corporation on July 19; the August 25 transfer had evidentiary value as to the character of the July 19 payment but it was not conclusive as appellant now contends. The defense offered as to the $3,000 payment was that, although recorded as a payment to Mrs. Stone, it was in fact a repayment through her of a loan made to the business by one John Ignizio, although Mrs. Stone was unable to recall Ignizio's name and the defendant did so only after considerable wavering. The jury was not bound to accept this and Stone would not have been aided if it had, for, as the government brought out in recross-examination, the statement of affairs showed no repayment of a loan from Ignizio. The gravemen of the offense charged in Count II of the indictment was knowing and fraudulent failure to disclose in the statement of affairs the repayment of loans during the year preceding the filing of the petition, and the allegation that the omitted repayments were of loans from Mrs. Stone was unnecessary, *cf. United States* v. *Hiss*, 185 F. 2d 822, 831 (2d Cir., 1950), *cert denied*, 340 U. S. 948 (1951). Under the charge the jury could have found Stone guilty on the basis that the repayments were of loans from

[1] The statement in the petition that the two payments made to Mrs. Stone on March 25 and May 22, 1955 "could not constitute a basis for petitioner's conviction" is erroneous. What we said was that if the analysis of the evidence made by appellant's counsel in his reply brief in this Court had been put before the jury at the trial, the jury might well have found that these two payments were in fact reported in the statement of affairs.

others, with Mrs. Stone merely a conduit, as well as on the basis that the repayments were of loans made by her; there was sufficient evidence to support a conviction on either basis; and the latter was a permissible variance since the statement as to the lender in the indictment was surplusage, the different version of the facts was offered by the defendant himself and thus plainly did not subject him to unfair surprise, and a conviction on this theory would not deprive him of his right to be protected against another prosecution for the same offense. See *Berger* v. *United States*, 295 U. S. 78, 83 (1935); *Meyers* v. *United States*, 3 F. 2d 379 (2d Cir., 1924); *Mathews* v. *United States*, 15 F. 2d 139 (8th Cir., 1926); *United States* v. *Remington*, 64 F. 2d 386 (2d Cir., 1933); *United States* v. *Rosenblum*, 176 F. 2d 321, 324 (7th Cir., 1949), *cert. denied*, 338 U. S. 893 (1949), *rehearing denied* 338 U. S. 940 (1950). The other contentions in the petition have been sufficiently discussed in our initial opinion.

The petition for rehearing is denied.

Opinion of United States Court of Appeals for the Second Circuit on Further Motion for Reconsideration

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA,

Appellee,

against

MICHAEL STONE,

Defendant-Appellant.

Appellant's further motion for reconsideration is denied. The motion to recall the mandate is granted and issuance of the mandate is stayed subject to compliance with Rule 28(c) of this Court.

L. H.,
H. J. F.,
U. S. C. J.J.

(October 17, 1960.)

Sheet No.

Terms

Rating

Credit Limit

NAME A&M Store

ADDRESS

DATE 1958	ITEMS	J.R. ✓	DEBIT	CREDIT	ITEMS
Sept 1	Balance		230 57		
28		CD 145		1600	Rec'd by
28		4[illegible] CD 147		300	
Rec'd by		301 13 151		[illegible]	[illegible] 31
Apr 30		CD. 155	140		
30		CD 156	800		

Sheet No

Terms

Rating

Credit Limit

NAME A&M Store

ADDRESS

Account No 18

DATE 19 58	ITEMS	FOLIO	DEBITS	DATE 19 58	ITEMS	FOLIO	CREDITS
Feb 1	Balance		230157	Feb 28		2332	1000 —
28		CD 147	1000 —	March 31		333	450000
28		4015 CD 147	300 —				1500 —
March 31		3015 151	320000	March 31		CR 316	4500 —
			551657				455000
Apr 30		CD 155	149 —				
30		CD 155	800 —				